

7 Official Opinions of the Compliance Board 118 (2011)

Minutes – Generally: preparation following all meetings, required; within reasonable time, required

Minutes – Contents – Final written report of committee not a substitute – Violation

Minutes – Practices Permitted – Transcript disclosure as minutes

March 10, 2011

Complainant:

*Craig O'Donnell
Kent County News*

Respondent:

*Bridge and Tunnel Inspection
Peer Review Panel*

The complaint alleges that the Bridge and Tunnel Inspection Peer Review Panel (“Peer Review Group”) failed to comply with provisions of the Open Meetings Act concerning notices, minutes, and recordkeeping.¹ The Maryland Transportation Authority, which staffed the Peer Review Group, has filed a response on its behalf. For the reasons explained below, we find that the Peer Review Group violated the Act.

I

Background

The Peer Review Group was created by the Secretary of Transportation at the direction of the Governor in September 2008. The panel consisted of seven engineering experts from around the country. It was charged with reviewing the Transportation Authority’s bridge and tunnel structural inspection practices in the wake of an accident on the Chesapeake Bay Bridge in August 2008 and with making recommendations to the Secretary for improvements in those practices. The Peer Review Group, which held several meetings over the course of its existence, completed its work and issued a final report in June 2009. See www.mdot.maryland.gov/mdta/PeerReviewReport.pdf.

¹ The complaint also alleges, at some length, that the Maryland Transportation Authority failed to respond adequately to a request under the Public Information Act for records related to the Peer Review Group, but acknowledges that we lack jurisdiction over those matters.

II

Discussion

There appears to be no dispute that the Peer Review Group was a “public body” for purposes of the Open Meetings Act.² The response conceded that the Peer Review Group did not take the Act into account in holding its meetings, with the result that it neither prepared nor retained minutes and other documentation required by the Act. The response contended that these deficiencies were not intentional and asserted that the final report of the Peer Review Group, available on the Department of Transportation website, disclosed “its investigation process, information considered, its findings and the reasons behind those findings.”

Given the general admission in the response, there is no need to belabor the past defects in the meeting practices of this now defunct public body. However, two observations concerning minutes may be worthwhile. The first concerns the relation of the panel’s report to what is required under the Act. The publication of a final report, however comprehensive, does not satisfy the requirements of the statute for the preparation and retention of minutes. §10-509. Even if a report issued at the end of a public body’s existence were to contain everything that would have appeared in minutes, contemporaneous minutes prepared in accordance with the Act will make that information available on a more timely basis. This may be critical to those members of the public who wish to keep current on the activities of a public body, when unable to attend its meetings.

Second, we understand that audio tape recordings were made for approximately half of the panel’s meetings and were ultimately transcribed. While the audio tapes themselves do not constitute minutes for purposes of the Act, a transcription that is created on a timely basis does satisfy the minutes requirement of §10-509. *See 2 OMCB Opinions* 87, 90 & n.2 (1999).

² The complainant apparently believed that the Peer Review Group was a public body because it was created by the Transportation Authority’s operating policy. However, it appears that the panel fit the definition of “public body” because it was appointed by the Secretary of Transportation at the behest of the Governor. *See* §10-502(h)(2)(i) (multimember board appointed by “an official who is subject to the policy direction of the Governor”). We thus need not address the parties’ respective assertions about the operating policy.

Accordingly, the agency may satisfy the Act's requirement that the public have access to minutes by permitting the complainant to inspect the transcriptions.

III

Conclusion

We find that the Peer Review Group violated the Open Meetings Act in failing to prepare and retain minutes and other documentation related to its meetings. Although the Peer Review Group no longer exists, we encourage the staff of the Transportation Authority to consider carefully and adhere to the requirements of the Act, if called upon to staff any future panels.

OPEN MEETINGS COMPLIANCE BOARD

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